



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0732]

RIN 1625-AA00

Safety Zone, Tarague Basin; Anderson AFB, GU

AGENCY: Coast Guard, DHS.

ACTION: Interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a safety zone in the waters off of Tarague Basin, Anderson AFB, Guam, for the safety of waterway users, during U.S. Air Force explosive ordinance disposal operations. The U.S. Air Force plans to engage in explosive ordinance disposal operations starting in August 2014, and continue to do so at varying times weekly, for an indefinite duration. The safety zone is activated, and therefore subject to enforcement, during these operations. When the safety zone is activated for enforcement, all entry into the safety zone (including vessels and persons) is prohibited except by permission from the Captain of the Port or his designated representative. The Coast Guard is implementing this interim rule for the safety of mariners; we encourage

comments on this rulemaking as to how we may improve the rule.

DATES: This rule is effective without actual notice [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For the purposes of enforcement, actual notice will be used from August 22, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2014-0732. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

- (1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: (202) 493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Chief Kristina Gauthier, U.S. Coast Guard Sector Guam at (671) 355-4866, email

Kristina.M.Gauthier@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826 or 1-800-647-5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this interim rule.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C.

553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard received notice of these explosive ordinance disposal operations on August 4, 2014. The first operation was scheduled for August 8, 2014. Due to this late notice, the Coast Guard did not have time to issue a notice of proposed rulemaking.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register due to the late notice and inherent danger in explosive ordinance disposal. Delaying the effective period of this safety zone would be contrary to the public interest.

C. Basis and Purpose

The statutory *basis* for this rulemaking is 33 U.S.C. 1231, which gives the Coast Guard, under a delegation from the Secretary of Homeland Security, regulatory authority to implement the Ports and Waterways Safety Act. A safety zone is a water area, shore area, or water and shore area, for which access is limited to authorized person, vehicles, or vessels for safety or environmental purposes.

The *purpose* of this rulemaking is to protect mariners from the potential hazards associated with U.S. Air Force

explosive ordinance disposal operations. Approaching too close to such operations could expose the mariner to flying debris or other hazardous conditions.

D. Discussion of the Interim Rule

The Coast Guard was recently made aware that the U.S. Air Force plans to engage in explosive ordinance disposal operations, in the vicinity of Tarague Basin, starting in August 2014, and continue to do so at varying times weekly, for an indefinite duration. In order to protect the public from the hazards of the U.S. Air Force explosive ordinance disposal, the Coast Guard is establishing a safety zone without prior notice and opportunity to comment. This safety zone will be enforced only at times when the orange range flag is hoisted. We estimate the zone will be enforced approximately 6 hours a week.

Enforcement periods will be indicated by a raised orange range flag located on a pole located 1250 feet west of Demo Pit at 13 degrees 35 minutes 59.751 seconds North Latitude and 144 degrees 55 minutes 27.4476 seconds East Longitude. These explosive ordinance disposals will, under normal circumstances happen during daylight hours. In case of an emergency explosive ordinance disposal after daylight hours may occur and the orange range flag will be illuminated.

For the purposes of enforcement, actual notice will be used from August 22, 2014, until this interim rule is published, [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], to inform those near the area of the rule. After publication of this rule, we will rely on constructive notice. The first scheduled operation was 7:15 a.m. on August 8, 2014 (Kilo, Local Time).

The Coast Guard is requesting public comment on this interim rule. Please submit any comments and related material on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. We may amend or otherwise change the interim rule based on your comments.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1

of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard expects the economic impact of this rule to be extremely minimal based on the limited geographic area affected and the limited enforcement times of the safety zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This safety zone will only be enforced during U.S. Air Force explosive ordinance disposal operations. This zone will encompass one mile arc in the water, from the center point, allowing for safe vessel passage outside of the zone.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions

concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order

12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the closure of the waterfront around Tarague Basin for approximately 6 hours a week. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be made available in the docket where indicated under ADDRESSES. We seek

any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701; 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1416 to read as follows:

§ 165.1416 Safety Zone; Tarague Basin; Anderson AFB, GU.

(a) Location. The following area, within the Guam Captain of the Port (COTP) Zone (See 33 CFR 3.70-15), from the surface of the water to the ocean floor, is a safety zone: A 1-mile radius centered on 13 degrees 35 minutes 59 seconds North Latitude and 144 degrees 55 minutes 38seconds East Longitude (NAD 1983) including the water arc between points 13 degrees 36 minutes 00 seconds North Latitude, 144

degrees 56 minutes 32 seconds East Longitude and 13 degrees 36 minutes 12 seconds North Latitude, 144 degrees 54 minutes 48 seconds East Longitude (NAD 1983).

(b) Enforcement period. This section will be enforced only during U.S. Air Force explosive ordinance disposal operations and only when an orange range flag is hoisted 1250 feet west of the Demo Pit at 13 degrees 35 minutes 59.751 seconds North Latitude and 144 degrees 55 minutes 27.4476 seconds East Longitude. In case of an emergency, an explosive ordinance disposal after daylight hours may occur in which case the orange range flag will be illuminated.

(c) Regulations. The general regulations governing safety zones contained in 33 CFR 165.23 apply to the zone described in paragraph (a) of this section. Entry into, transit through or within this zone is prohibited unless authorized by the COTP or a designated representative thereof.

(d) Enforcement. Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce this safety zone.

(e) Waiver. The COTP may waive any of the requirements of this rule for any person, vessel, or class

of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

(f) Penalties. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: August 22, 2014.

Brenden J. Kettner,
Commander, U.S. Coast Guard,
Captain of the Port Guam, Acting.

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